

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY RAMEY,

Plaintiff,

v.

K. TRAN, et al.,

Defendants.

1: 05 CV F- 0228 AWI DLB P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

Plaintiff is a state prisoner proceeding pro per and in forma pauperis with a civil rights action pursuant to 42 U.S.C. section 1983. Pending before the Court is the complaint, filed February 11, 2005.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment. Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (en banc).

1 In the instant case, plaintiff brings action against Kim Tran, prison pharmacist, the
 2 Department of Corrections and Pleasant Valley State Prison ("PVSP") health care providers.
 3 Plaintiff alleges that in March 1998, he was prescribed Motrin as an allergy drug with no warning
 4 regarding the side effects of the drug. He alleges this information was concealed by defendant Tran.
 5 He alleges that in July 1998, he was denied medical care for a wrist injury and that the health care
 6 providers at PVSP concealed the cause of his injury and concealed known information regarding the
 7 allergy drug prescribed to him. It appears as though plaintiff contends that he was allergic to the
 8 allergy medication.

9 A. Department of Corrections as a Defendant

10 Plaintiff names the Department of Corrections as a defendant. Plaintiff may not sustain an
 11 action against a state prison. The Eleventh Amendment prohibits federal courts from hearing suits
 12 brought against an unconsenting state. Brooks v. Sulphur Springs Valley Elec. Co., 951 F.2d 1050,
 13 1053 (9th Cir. 1991) (citation omitted); see also Seminole Tribe of Fla. v. Florida, 116 S.Ct. 1114,
 14 1122 (1996); Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993);
 15 Austin v. State Indus. Ins. Sys., 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars
 16 suits against state agencies as well as those where the state itself is named as a defendant. See
 17 Natural Resources Defense Council v. California Dep't of Transp., 96 F.3d 420, 421 (9th Cir. 1996);
 18 Brook, 951 F.2d at 1053; Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that
 19 Nevada Department of Prisons was a state agency entitled to Eleventh Amendment immunity);
 20 Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201 (9th Cir. 1989). Because the
 21 California Department of Corrections is a state agency, it is entitled to Eleventh Amendment
 22 immunity from suit.

23 B. Inadequate Medical Care

24 A prisoner's claim of inadequate medical care does not constitute cruel and unusual
 25 punishment unless the mistreatment rises to the level of "deliberate indifference to serious medical
 26 needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). The "deliberate indifference" standard involves
 27 an objective and a subjective prong. First, the alleged deprivation must be, in objective terms,
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1 “sufficiently serious.” Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501
 2 U.S. 294, 298 (1991)). Second, the prison official must act with a “sufficiently culpable state of
 3 mind,” which entails more than mere negligence, but less than conduct undertaken for the very
 4 purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837. A prison official does not act in a
 5 deliberately indifferent manner unless the official “knows of and disregards an excessive risk to
 6 inmate health or safety.” Id.

7 In applying this standard, the Ninth Circuit has held that before it can be said that a prisoner's
 8 civil rights have been abridged, "the indifference to his medical needs must be substantial. Mere
 9 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton
 10 v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle, 429 U.S. at 105-06. “[A]
 11 complaint that a physician has been negligent in diagnosing or treating a medical condition does not
 12 state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does
 13 not become a constitutional violation merely because the victim is a prisoner.” Estelle v. Gamble,
 14 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995);
 15 McGuckin v. Smith, 974 F.2d 1050, 1050 (9th Cir. 1992), overruled on other grounds, WMX Techs.,
 16 Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997)(en banc). Even gross negligence is insufficient to
 17 establish deliberate indifference to serious medical needs. See Wood v. Housewright, 900 F.2d
 18 1332, 1334 (9th Cir. 1990). A prisoner’s mere disagreement with diagnosis or treatment does not
 19 support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

20 Deliberate indifference can be manifested by prison guards intentionally denying or delaying
 21 access to medical care or intentionally interfering with the treatment once prescribed. Estelle v.
 22 Gamble, 429 U.S. at 104-05. However, where a prisoner alleges a delay in receiving medical
 23 treatment, the prisoner must allege that the delay led to further injury. McGuckin v. Smith, 974 F.2d
 24 1050, 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs, Inc. v. Miller, 104 F.3d 1133,
 25 1136 (9th Cir. 1997); Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
 26 1985).

27 Although neither a physician’s negligence nor a prisoner’s disagreement with a particular
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1 course of treatment states a claim for deliberate indifference, a prison medical staff's acts or
 2 omissions will constitute deliberate indifference if staff members knew of and disregarded an
 3 excessive risk to an inmate's health. Farmer v. Brennan, 511 U.S. at 837. Prison officials are
 4 deliberately indifferent to a prisoner's serious medical needs when they "interfere with treatment
 5 once prescribed." Estelle v. Gamble, 429 U.S. at 104-05. The Ninth Circuit has found deliberate
 6 indifference where prison officials "deliberately ignore the express orders of a prisoner's prior
 7 physician for reasons unrelated to the medical needs of the prisoner." Hamilton v. Endell, 981 F.2d
 8 1062, 1066 (9th Cir. 1992)(reversing summary judgment where prison officials forced prisoner to
 9 endure a plane flight that resulted in ear injury, in direct contravention of a treating physician's
 10 previous orders); Ortiz v. City of Imperial, 884 F.2d 1312, 1314 (9th Cir. 1989)(per
 11 curium)(reversing summary judgment where medical staff knew that pretrial detainee had head
 12 injury, but prescribed contraindicated medications, disregarding evidence of complications to which
 13 they had been specifically alerted by private treating physician); Tolbert v. Eyman, 434 F.2d 625 (9th
 14 Cir. 1970)(finding cognizable claim for deliberate indifference where warden refused to authorize
 15 prisoner's receipt of medicine that had been previously prescribed by a physician); Cf. McGuckin v.
 16 Smith, 974 F.2d 1050, 1062 (9th Cir. 1992)(where surgery recommended by prisoner's prior
 17 physician was severely delayed, court was unable hold doctors liable because prison administrators,
 18 not the doctors, were responsible for scheduling treatment).

19 Plaintiff's allegations are insufficient to state a claim for deliberate indifference to a serious
 20 medical need in violation of the Eighth Amendment. Although perhaps negligent, plaintiff fails to
 21 allege that Tran or any other health care provider deliberately concealed information regarding the
 22 allergy medication, ignored treatment once prescribed or other conduct evidencing that defendants
 23 knew of and disregarding an excessive risk to plaintiff's health. As noted, neither a physician's
 24 negligence nor a prisoner's disagreement with a particular course of treatment states a claim for
 25 deliberate indifference. Farmer v. Brennan, 511 U.S. at 837.

26 C. Conclusion

27 Plaintiff fails to state a cognizable claim for relief against any of the named defendants and
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1 therefore the complaint must be dismissed in its entirety. The court will provide plaintiff with the
2 opportunity to file an amended complaint to attempt to cure the deficiencies in the allegations, if
3 plaintiff wishes to do so.

4 In the event that plaintiff does wish to amend his complaint, plaintiff is advised Local Rule
5 15-220 requires that an amended complaint be complete in itself without reference to any prior
6 pleading. As a general rule, an amended complaint supersedes the original complaint. See Loux v.
7 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
8 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
9 original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
11 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy,
12 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named
13 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some
14 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v.
15 Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
16 588 F.2d 740, 743 (9th Cir. 1978).

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. The Clerk's Office shall send plaintiff a civil rights complaint form;
- 19 2. Within thirty (30) days from the date of service of this order, plaintiff must file an
20 amended complaint curing the deficiencies identified by the court in this order;
- 21 3. If plaintiff fails to comply with this order, this action will be dismissed for failure to
22 obey a court order and failure to state a claim upon which relief can be granted.

23 IT IS SO ORDERED.

24 **Dated: September 7, 2005**
3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE